

October 16, 2014

Via ECF

The Honorable Lorna G. Schofield  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

Re: *In re Foreign Exchange Benchmarks Antitrust Litigation*,  
No. 1:13-cv-07789-LGS (S.D.N.Y.)

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Dear Judge Schofield:

We write in connection with the “status report letter” submitted by plaintiffs in this matter on October 15, 2014. Defendants did not join plaintiffs’ submission because no such “status report letter” had been requested by the Court and because, as plaintiffs concede, the parties are still in discussions on the issues about which the Court asked them to confer while the discovery is stayed, so a report at this point is premature. (Defendants also invited plaintiffs to seek any urgent relief they may require under the Court’s regular motions procedure—an invitation plaintiffs have declined in favor of a “status report letter” that does not seek any action from the Court.) Accordingly, defendants believe only a brief response to plaintiffs’ submission is warranted:

**1. Discussions with the Department of Justice:** Plaintiffs’ “status report” on this issue goes far beyond apprising the Court of the status of plaintiffs’ discussions with the government concerning coordination of discovery, in a transparent attempt to influence the Court with factual assertions from a newspaper story outside the pleadings during the pendency of the motion to dismiss. As defendants explained in their motion to dismiss, the fact of a government investigation is not sufficient to save an otherwise deficient complaint.

**2. Preservation Matters:** In our discussions with plaintiffs on preservation matters, defendants have been guided by the Court’s reference to the Seventh Circuit’s pilot rules, which counsel against overbroad preservation requests. Defendants are regulated entities with policies requiring document retention and the use of only firm-approved devices or applications for business communications—policies that are inconsistent with plaintiffs’ unsupported and speculative claims about personal technology. Nonetheless, as plaintiffs indicate, they are continuing to discuss these issues with defendants and it is therefore premature to raise them with the Court.

Unless the Court would prefer that we respond to the issues noted in plaintiffs’ report in full at this time, defendants will continue to discuss with plaintiffs the topics the Court identified at the initial pretrial conference and will be prepared to address any remaining areas of disagreement, if necessary, following the ruling on the motions to dismiss.

Respectfully submitted,

SHEARMAN & STERLING LLP

By: /s/ Adam F. Hakki  
Adam F. Hakki  
Richard F. Schwed  
Jeffrey J. Resetarits  
599 Lexington Avenue  
New York, New York 10022  
Telephone: (212) 848-4000  
ahakki@shearman.com  
rschwed@shearman.com  
jresetarits@shearman.com

*Attorneys for Defendants Bank of America  
Corporation and Bank of America, N.A.*

SULLIVAN & CROMWELL LLP

By: /s/ Yvonne S. Quinn  
Yvonne S. Quinn  
David H. Braff  
Jeffrey T. Scott  
Qian A. Gao  
125 Broad Street  
New York, New York 10004  
Telephone: (212) 558-4000  
quinny@sullcrom.com  
braffd@sullcrom.com  
scottj@sullcrom.com  
gaoq@sullcrom.com

*Attorneys for Defendants Barclays Bank PLC  
and Barclays Capital Inc.*

ALLEN & OVERY LLP

By: /s/ David C. Esseks

David C. Esseks

Brian de Haan

1221 Avenue of the Americas

New York, NY 10020

Telephone: (212) 610-6300

david.esseks@allenoverly.com

brian.deHaan@allenoverly.com

John Terzaken (*pro hac vice motion  
forthcoming*)

110 1 New York Avenue

Washington, D.C. 20005

Telephone: (202) 683-3800

john.terzaken@allenoverly.com

*Attorneys for Defendant BNP Paribas*

COVINGTON & BURLING LLP

By: /s/ Andrew A. Ruffino

Andrew A. Ruffino

The New York Times Building

620 Eighth Avenue

New York, New York 10018

Telephone: (212) 841-1000

aruffino@cov.com

Alan M. Wiseman

Thomas A. Isaacson (*pro hac vice motion  
forthcoming*)

Andrew D. Lazerow (*pro hac vice motion  
forthcoming*)

1201 Pennsylvania Avenue, N.W.

Washington, D.C. 20004

Telephone: (202) 662-6000

awiseman@cov.com

tisaacson@cov.com

*Attorneys for Defendants Citibank, N.A. and  
Citigroup Inc.*

CAHILL GORDON & REINDEL LLP

By: /s/ David G. Januszewski

David G. Januszewski

Herbert S. Washer

Elai Katz

Jason M. Hall

80 Pine Street

New York, New York 10005

Telephone: (212) 701-3000

Facsimile: (212) 269-5420

djanuszewski@cahill.com

ekatz@cahill.com

jhall@cahill.com

*Attorneys for Defendants Credit Suisse  
Securities (USA) LLC and Credit Suisse Group  
AG*

KIRKLAND & ELLIS LLP

By: /s/ Robert Khuzami

Robert Khuzami

Joseph Serino, Jr., P.C.

Eric F. Leon, P.C.

601 Lexington Avenue

New York, New York 10022

Telephone: (212) 446-6425

Facsimile: (212) 446-6460

robert.khuzami@kirkland.com

joseph.serino@kirkland.com

eric.leon@kirkland.com

G. Patrick Montgomery (*pro hac vice  
forthcoming*)

655 Fifteenth Street, N.W.

Washington, D.C. 20005-5793

Telephone: (202) 879-5000

Facsimile: (202) 879-5200

*Attorneys for Defendant Deutsche Bank AG*

CLEARY GOTTlieb STEEN &  
HAMILTON LLP

By: /s/ Thomas J. Moloney

Thomas J. Moloney

Victor L. Hou

Elizabeth Vicens

Andrew Darcy

One Liberty Plaza

New York, New York 10006

Telephone: (212) 225-2000

Facsimile: (212) 225-3999

tmoloney@cgsh.com

vhou@cgsh.com

evicens@cgsh.com

adarcy@cgsh.com

*Attorneys for Defendants The Goldman Sachs  
Group, Inc. and Goldman, Sachs & Co.*

LOCKE LORD LLP

By: /s/ Edwin R. DeYoung

Edwin R. DeYoung

Gregory T. Casamento

3 World Financial Center

New York, New York 10281

Telephone: (212) 812-8325

Facsimile: (212) 812-8385

edeyoung@lockelord.com

gcasamento@lockelord.com

Roger B. Cowie

2200 Ross Avenue, Suite 2200

Dallas, Texas 75201

Telephone: (214) 740-8614

Facsimile: (214) 740-8800

rcowie@lockelord.com

*Attorneys for Defendants HSBC Holdings plc  
and HSBC Bank plc*

SKADDEN, ARPS, SLATE, MEAGHER &  
FLOM LLP

By: /s/ Peter E. Greene  
Peter E. Greene  
Boris Bershteyn  
Peter S. Julian  
Four Times Square  
New York, New York 10036  
Telephone: (212) 735-3000  
Facsimile: (212) 735-2000  
peter.greene@skadden.com  
boris.bershteyn@skadden.com  
peter.julian@skadden.com

Patrick Fitzgerald  
155 N. Wacker Drive  
Suite 2700  
Chicago, Illinois 60606  
Telephone: (312) 407-0508  
Facsimile: (312) 407-0411  
patrick.fitzgerald@skadden.com

*Attorneys for Defendants JPMorgan Chase &  
Co. and JPMorgan Chase Bank, N.A.*

WACHTELL, LIPTON, ROSEN & KATZ

By: /s/ Jonathan M. Moses  
Jonathan M. Moses  
Keia D. Cole  
51 West 52nd Street  
New York, New York 10019  
Telephone: (212) 403-1000  
Facsimile: (212) 403-2000  
JMMoses@wlrk.com  
KDCole@wlrk.com

*Attorneys for Defendant Morgan Stanley*

DAVIS POLK & WARDWELL LLP

By: /s/ Arthur J. Burke

Arthur J. Burke  
Greg D. Andres  
Charles Shiolen  
450 Lexington Avenue  
New York, New York 10017  
Telephone: (212) 450-4000  
Facsimile: (212) 450-4800  
arthur.burke@davispolk.com  
greg.andres@davispolk.com  
charles.shiolen@davispolk.com

*Attorneys for Defendant The Royal Bank of  
Scotland Group plc*

GIBSON, DUNN & CRUTCHER LLP

By: /s/ Joel S. Sanders

Joel S. Sanders  
555 Mission Street  
San Francisco, California 94105  
Telephone: (415) 393-6268  
Facsimile: (415) 374-8439  
jsanders@gibsondunn.com

Joshua H. Soven  
Melanie L. Katsur  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036  
Telephone: (202) 955-8503  
Facsimile: (202) 530-9518  
jsoven@gibsondunn.com

*Attorneys for Defendants UBS AG and UBS  
Securities, LLC*